

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**Complaint on Sunday
and Holiday Collections**

Docket No. C2001-1

**DOUGLAS F. CARLSON
ANSWER IN OPPOSITION
TO POSTAL SERVICE MOTION TO DISMISS**

December 11, 2000

I. INTRODUCTION

On October 27, 2000, I filed a document titled "Complaint on Sunday and Holiday Collections." My complaint alleges the following:

- The Postal Service has eliminated collection and processing of outgoing First-Class Mail on several holidays without first requesting an advisory opinion from the Commission on whether customers would receive adequate postal services, within the meaning of 39 U.S.C. § 3661(a), if they did not have access to outgoing First-Class Mail service on holidays or for two consecutive days. See Complaint at 3–4, ¶¶ 13–21. Section 3661(b) requires the Postal Service to request an advisory opinion from the Commission before implementing a change in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis.
- The Postal Service does not provide the level of holiday collection and outgoing First-Class Mail service that the POM prescribes. Complaint at 4, ¶ 21.

- The Postal Service does not provide the level of collection service on Christmas Eve and New Year's Eve that the POM prescribes. See Complaint at 4–6, ¶¶ 22–34.
- The Postal Service eliminated collection and processing of outgoing First-Class Mail on Sundays without first seeking an advisory opinion from the Commission on whether customers would receive adequate postal services, within the meaning of 39 U.S.C. § 3661(a), if they did not have access to outgoing First-Class Mail service on Sundays.

The Postal Service answered my complaint and moved to dismiss it. Answer of the United States Postal Service and Motion to Dismiss (filed November 27, 2000). In its response, the Postal Service attempts to cloud the issue with implausible interpretations of the POM and assertions that the Commission lacks authority to adjudicate this complaint. Nonetheless, the Postal Service, albeit reluctantly, admits the key factual allegations on which I based my complaint:

- Compared to the 1970's and early 1980's, "processing and distribution facilities, in general, probably tended to do more processing of outgoing mail on holidays than they currently tend to do[.]" Answer at 6, ¶ 14. As a result of changes over time, "more facilities" exist "in which outgoing mail processing now tends not to be conducted" on the widely observed holidays of Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. *Id.*, ¶ 15.¹
- Post offices in some areas did not provide normal Friday collection service on Christmas Eve in 1999, and in most instances these post offices did not post a notice on each collection box alerting mailers that the Friday

¹ As explained *infra*, the Commission should not accept this vague response as a definitive answer to my allegation at ¶ 15 of my complaint except to the extent that this response admits that the Postal Service has gradually phased out processing of outgoing First-Class Mail on widely observed holidays. The Postal Service is capable of formulating a more-definitive, more-detailed response.

collection time would not apply. *Id.* at 8–9 , ¶ 25. At least one post office conducted early collections on New Year's Eve as well. *Id.* at 10, ¶ 27.

- The Postal Service eliminated collection and processing of outgoing First-Class Mail on Sundays in 1988 without first seeking an advisory opinion from the Commission. *Id.* at 4–5, ¶¶ 10 and 11.

In addition, the Postal Service's answer reveals that the elimination of collection and processing of outgoing First-Class Mail on holidays is even more widespread — and serious — than my complaint alleges. My complaint focused on six widely observed holidays. With the exception of Kalispell, Montana, as described in paragraph 19 of my complaint, I assumed that the Postal Service generally collected and processed outgoing First-Class Mail on non-widely-observed holidays, including Martin Luther King Jr.'s Birthday, Washington's Birthday, Columbus Day, and Veterans' Day. Memos in Attachment B to the Postal Service's answer reveal that the *default* policy is *not* to process outgoing First-Class Mail on the first three of these holidays. The memo is silent on outgoing mail processing on Veterans' Day — although I note that I was surprised to discover that the P&DC in Oakland, California, apparently did not process outgoing First-Class Mail on Veterans' Day in 2000, thus signalling a departure from past practice and yet another change in the nature of holiday mail service.

In filing a 52-page response to my complaint, the Postal Service attempts to create the illusion that the *factual and legal issues are more complicated than they are*. In reality, the Postal Service has admitted the essential factual allegations contained in my complaint. This service complaint is valid and appropriate under 39 U.S.C. § 3662. Therefore, pursuant to Rule 21, I hereby answer the Postal Service's motion to dismiss by rebutting the Postal Service's various claims in support of the motion to dismiss.

II. ARGUMENT

Section 3662 permits interested parties to file a complaint with the Commission if they are “not receiving postal service in accordance with the policies of this title.” Relevant to this complaint are two possible ways in which customers may not be receiving postal service in accordance with the policies of title 39.

First, customers may not be receiving a service that the Postal Reorganization Act specifically requires. As I explain in section II.B., *infra*, the Act requires the Postal Service to provide an efficient system of collecting mail. The Act also empowers the Postal Service to issue rules and regulations to accomplish the objectives of the Act. The POM contains policies and regulations governing collections. Therefore, the POM regulations governing collections are the regulations implementing the congressional mandate to provide efficient collections. A customer who is not receiving these collection services may file a complaint with the Commission under section 3662.

A second way exists in which a customer may not be receiving postal services in accordance with title 39. Before the Postal Service changes the nature of postal services in a way that will “generally affect service on a nationwide or substantially nationwide basis,” section 3661 requires the Postal Service to request an advisory opinion from the Commission. Users of the mail shall have an opportunity to be heard before the Commission issues its advisory opinion. 39 U.S.C. § 3661(c). If the Postal Service changes the nature of postal services without first requesting an advisory opinion from the Postal Service, a customer subjected to these revised — and, presumably, curtailed — services is not receiving postal services in accordance with the policies of title 39. For example, the Postal Service reduced or eliminated outgoing mail service on some holidays without first requesting an advisory opinion from the Commission. The Postal Service violated section 3661 by failing to obtain an advisory opinion from the Commission and, thus, creating an opportunity for users of the mail to

be heard. Therefore, postal customers such as I are not receiving postal services in accordance with the policies of title 39. Section 3662 provides a remedy via the complaint process.

In summary, if the Postal Service fails to provide collection services consistent with the POM, a customer may file a complaint. In addition, if the Postal Service changes its policy on collections — whether by amending the POM, issuing a memo from headquarters, or simply changing actual practice — without first obtaining an advisory opinion from the Commission, a customer may file a complaint. All issues in this complaint fall under one or both categories of circumstances for which a complaint is proper.

After admitting the key facts in my complaint, the Postal Service launches an attack on the Commission's jurisdiction. The practical effect of the Postal Service's claims would be to remove practically any service issue from the Commission's jurisdiction. This result would be wholly unsupportable and unacceptable under the Act, since section 3662 provides postal customers with a clear remedy when the Postal Service fails to provide services consistent with the policies of title 39. Since the section 3662 complaint process is, in fact, one of the few remedies that customers have against the Postal Service on service issues, the Commission should assert its jurisdiction over the Postal Service in resolving the issues in this complaint.

I will now respond specifically to the Postal Service's various claims.

A. The Postal Service claims that I failed to allege that I am not receiving postal services in accordance with the policies of title 39.

The Postal Service urges the Commission to dismiss my complaint because my complaint "fails to allege that the complainant is not receiving postal services in accordance with the policies of title 39." Answer at 12, ¶ 1. In support of this position, the Postal Service cites 39 U.S.C. § 3662, which allows "interested parties . . . who believe that they are not receiving postal service in

accordance with the policies of this title” to file a complaint with the Commission. Answer at 12, ¶ 1. The test, then, is whether my complaint indicates that I do not believe that I am receiving postal services in accordance with the policies of title 39.

The Postal Service admits that it has eliminated collection and processing of outgoing First-Class Mail on some holidays, as I alleged in my complaint. See *Id.* at 6, ¶¶ 14 and 15; Complaint at 3–4, ¶¶ 13–21. Also, the Postal Service admits, as I alleged in my complaint, that it stopped collecting and processing outgoing First-Class Mail on Sundays and that it conducted collections on Christmas Eve in 1999 prior to the final weekday collection time posted on collection boxes. Answer at 5, ¶ 11, and at 8, ¶ 24. As I explained in my complaint, the Postal Reorganization Act requires the Postal Service to provide efficient collection services. Complaint at 1, ¶ 3. The POM provides the implementing regulations for the Act. *Id.* at 1, ¶¶ 4–5. By filing a complaint on this service problem and explaining the Postal Service’s failure to provide the proper level of Sunday and holiday mail service, I have demonstrated a clear belief that I am not receiving postal services in accordance with title 39. After all, I surely am not receiving outgoing mail collection and processing on Sunday.

In addition, in my complaint, I provided specific examples of the Postal Service’s failure to provide processing of outgoing mail on Memorial Day and Labor Day in Oakland, California. *Id.* at 3, ¶ 17. I lived in the Oakland P&DC’s service area for 12 years, including the years cited in my complaint. Since the Oakland P&DC did not provide these services, I certainly did not receive them, even though I believe that the POM requires them.

Lastly, my concern about collections on Christmas Eve is clear since I noted that curtailed collection services could affect any customer present in an affected area. Since I could be present in an affected area in any given year without even knowing until it was too late to avoid harm that I was in an area of

curtailed collections, the threat that early collections pose undoubtedly affects me.

My complaint satisfies 39 U.S.C. § 3662 because it amply demonstrates that I believe that I am not receiving postal services in accordance with title 39. In fact, no other conclusion is plausible. The Postal Service's inability to draw this rather obvious conclusion from my complaint does not justify its motion to dismiss on this ground.

B. The Postal Service claims that provisions of the POM are not necessarily commensurate with the policies of the Postal Reorganization Act.

The Postal Service apparently contends that POM policies governing service levels are not necessarily policies under title 39. See Answer at 12, ¶ 1. Determining which POM policy constitutes a policy under title 39 for purposes of 39 U.S.C. § 3662 is not necessarily straightforward. However, in this case, the determination is simple. As I explained in my complaint, one of the few services that the Postal Reorganization Act *specifically mentions* is collections. 39 U.S.C. §§ 404(1) and 403(b); Complaint at 1, ¶¶ 2 and 4. Section 403(b) goes so far as to require an efficient system of collecting the mail. The Act empowers the Postal Service to issue regulations to accomplish the objectives of title 39. 39 U.S.C. § 401(2). The POM sets forth the policies, regulations and procedures of the Postal Service governing collections. POM 8, July 16, 1998, preface page; see also 39 C.F.R. § 211.2(a)(2). Therefore, only one conclusion is possible: collection policy is a policy under title 39, and the POM specifies these policies. Therefore, the Commission may adjudicate complaints concerning collections under 39 U.S.C. § 3662.

C. The Postal Service claims that the Commission does not have jurisdiction to consider complaints concerning service that is “merely not in accordance with the POM.” Complaint at [13], ¶ 2.

As explained above, the POM provides the Postal Service's policy on collections. Collections policy is a policy under title 39 because title 39 specifically requires the Postal Service to maintain an efficient system of collecting mail. 39 U.S.C. § 403(b). The Postal Service also must provide adequate and efficient postal services. 39 U.S.C. § 3661(a). Section 3662 provides citizens a right to file a complaint with the Commission if they are not receiving postal services in accordance with the policies of title 39. Therefore, the Commission most certainly does have jurisdiction to review a complaint concerning service that is not consistent with POM provisions if the POM provisions in question concern, as they do here, implementation of the title 39 requirement to maintain an adequate and efficient system of collections.

The Postal Service's motion to dismiss leaves a reader wondering whether *any* circumstances exist in which the Postal Service would consider Commission review of a service complaint under 39 U.S.C. § 3662 to be appropriate. This complaint concerning collections is about as closely related to a title 39 policy as any complaint could be, yet the Postal Service still contends that the Commission has no jurisdiction.

Section 3662 is one of citizens' few recourses against the Postal Service when the Postal Service fails to provide customers with the proper level of service. As the correspondence in exhibit 4 of my complaint demonstrates, even writing to the Postal Service's chief operating officer and executive vice president and a governor of the Postal Service to obtain information related to collections on Christmas Eve was an exercise in futility. The Commission should reject the Postal Service's attempt effectively to render section 3662 meaningless; instead, the Commission should preserve this important right of citizens to file legitimate service complaints. This complaint is proper and should proceed.

D. The Postal Service suggests that amending the POM will render my complaint moot by curing "technical inconsistencies." Complaint at [13], ¶ 2.

The Postal Service apparently sees some issues in this case as mere “technical inconsistencies” between POM language and actual practice; once the POM is amended to conform to actual practice, customers will lose the legal basis to file a complaint. With this position, the Postal Service misses the point underlying this entire proceeding: When the Postal Service wishes to change the “nature of postal services” in a way that will affect service on a “nationwide or substantially nationwide basis,” the Postal Service must request an advisory opinion from the Commission before the effective date of the proposal. 39 U.S.C. § 3661(b). Importantly, users of the mail shall have an opportunity to provide the Commission with input on the Postal Service’s proposal. 39 U.S.C. § 3661(c). The Postal Service failed to comply with 39 U.S.C. § 3661 before curtailing or eliminating collections and outgoing mail processing on Sundays and many holidays, thus depriving the public of any input in this decision. The issue, then, is the *underlying operational policy* that the Postal Service follows, not POM language per se. Changing the underlying policy triggers 39 U.S.C. § 3661, even if the Postal Service forgets to update the POM or intentionally avoids publicizing the change. This complaint will not be moot merely because the Postal Service is amending certain POM provisions. The Postal Service must not change these policies without obtaining an advisory opinion from the Commission first. If it does, interested parties may file a complaint under section 3662.

E. The Postal Service suggests that gradual changes in policy allow the Postal Service to dodge 39 U.S.C. § 3661 and avoid the need to request an advisory opinion. Answer at 16.

The Postal Service asserts that there has been “no specific change in holiday service policy that would even arguably have created the occasion for a request for an advisory opinion on a nationwide change in service under section 3661.” *Id.* at 16, ¶ 7; *see also Id.* at 2–3. At the same time, the Postal Service

admits that holiday mail processing is less common now than it was in the 1970's and 1980's. *See, generally, Id.* at 6, ¶¶ 14 and 15, and at 7, ¶ 17.²

On this key issue, the Postal Service has provided the Commission with an unacceptably vague answer to the essential component of my complaint — specifically, my contention that the Postal Service has phased out collection and processing of outgoing mail on widely observed holidays. Without a doubt, the *Postal Service could provide records and witnesses who could readily describe* holiday mail processing. If I, as one customer, have a wealth of knowledge and experience confirming this trend, so should the Postal Service. The Commission will need to obtain better information from the Postal Service during adjudication of this complaint. At present, this issue of material fact is in dispute. If the timing and extent of the curtailment of holiday collections and processing become relevant to ruling on the Postal Service's motion to dismiss, at minimum the *Commission should require a better answer from the Postal Service on this* central issue.

A change in policy of some magnitude is not in dispute. The Commission should not entertain the Postal Service's suggestion that it can dodge section 3661 by implementing a national change in policy gradually and quietly. Section 3661 contains no such exception. Services may no longer be "adequate and efficient" if they are eliminated either gradually or suddenly. The Postal Service should never have proceeded down a path, gradual or not, that would create a *de facto* national change in holiday mail service without having sought an advisory opinion from the Commission first. However, since the Postal Service did proceed in this fashion, customers are now not receiving the level of holiday mail service that the POM requires. My complaint under section 3662 is valid.

² The Postal Service's response to ¶ 17 of my complaint is particularly instructive, as it demonstrates how the Postal Service has eliminated holiday mail processing at the Oakland P&DC on Memorial Day and Labor Day in just the last year or two. In fact, by failing to deny that the Oakland P&DC processed outgoing mail on Labor Day for many years in the 1990's until 1999, the Postal Service has admitted this fact. *See* Rule 84(a).

- F. According to the Postal Service, since the POM allows the chief operating officer and executive vice president to make exceptions to the POM-mandated service levels, existing practices are consistent with the POM.**

The Postal Service is correct in noting that the POM allows for the possibility of exceptions. Answer at 16, ¶ 7. However, the Commission must examine the bottom line: In the past several years, customers nationwide have lost outgoing mail service on many holidays. Whereas outgoing mail service on holidays once existed, now the default policy is not to provide outgoing mail service on holidays. This change in holiday mail service constitutes a change in the nature of postal services. The memos in Attachment B to the Postal Service's answer reveal that the exceptions are the norm. Whether due to exceptions or specific policy changes, customers are not receiving holiday mail service anymore. The Postal Service failed to seek an advisory opinion from the Commission before changing the level of holiday mail service. Therefore, the Commission may appropriately issue a public report documenting this service problem.

In addition, the exceptions authorized for Christmas Eve in 1999 did not permit final collections to be completed by noon, as they were in the Southeast New England District. See Complaint at 5, ¶ 26. The November 17, 1999, memo in Attachment B to the Postal Service's answer permitted, for Christmas Eve, elimination of *late-evening* collections only. Plenty of districts conducted their final collections on Christmas Eve in the early afternoon. Thus, even the authorized exception does not allow the circumstances that existed on Christmas Eve in 1999.

- G. The Postal Service claims that POM provisions establishing service levels for collections do not also establish service levels for processing the mail once it is collected.**

The Postal Service expends considerably energy asserting that the POM provisions establishing service levels for collections do not also establish service levels for processing the mail once it is collected. Answer at [13]–14, ¶ 3 and at 16–17, ¶ 7. The Postal Service admits that collections are related to mail processing in the sense that little point exists in making collections if the mail will not be processed on the day of collection. See *Id.* at 16, ¶ 7. However, the Postal Service sees no relation in the other direction — the one that is relevant here. Despite the elaborate service standards governing collections that Exhibit 125.22 and Chapter 3 of the POM prescribe, the Postal Service, for purposes of defending against my complaint, infers no requirement for mail to be processed on the day of collection.

For example, I explained in my complaint that POM §§ 322.233 and 322.343 require Sunday and holiday collections at least once a day from collection boxes located at main post offices, stations, and branches and from collection boxes that receive a daily average of 100 pieces of mail or more on weekdays. See Complaint at 2–3, ¶¶ 9 and 13. As an example, POM § 322.233 reads:

Sunday and holiday pickups should be at least once a day, as late as possible, to ensure that the mail will connect with dispatches of value to meet established standards.

The Postal Service attempts to excuse this requirement by stating that established standards do not create dispatches of value anymore, so the collections are not required, either. See Answer at 4, ¶ 9 and at 5, ¶ 13. Unfortunately for the Postal Service, dodging this requirement is not so simple.

First, POM §§ 322.233 and 322.343 require Sunday and holiday collections once a day to connect with dispatches of value, not *if and only if* they will connect with dispatches of value. My interpretation is correct because Sunday and holiday mail processing existed when these POM policies were written. Since Sunday and holiday mail processing existed when these POM policies were written, the POM clearly intends to provide customers with

collection and mail processing on Sunday and holidays. Dispatches of value existed when these POM policies were written. The POM drafters perhaps are guilty only of failing to state the obvious. If collections were unrelated to mail processing, as the Postal Service now asserts, the POM would not direct postal officials to ensure that the mail would connect with dispatches of value. Chapter 3's detailed, customer-friendly provisions for collections on weekdays, Saturdays, Sundays, and holidays, requiring collections to be made as late in the day as possible, would provide a virtually worthless level of service to customers if outgoing mail processing did not also exist for the mail once it was collected. Since the POM presumably was written logically, one must conclude that the service standards for collections also ensure that the underlying mail processing will occur as well.

Indeed, Postal Service policy and practice in EXFC areas is particularly concerned with ensuring that all mail is processed on the day of collection, thus underscoring the obvious nexus between collections and mail processing. Postal Service memos surely will confirm this policy.

Second, POM § 316 requires lower-volume boxes, such as residential boxes, to display a collection-times decal that provides the location of the nearest collection box where Sunday and holiday services are available. Time-decal boxes — those boxes that have a weekday collection at 5:00 PM or later — must provide the location of the nearest processing facility or other location that provides Sunday and holiday service. POM § 316 clearly presumes that Sunday and holiday mail processing exists. Otherwise, POM § 316 would accomplish little more than to send customers driving all over town in pursuit of a collection box that would do nothing to expedite their mail. A conveniently located collection box with no holiday collection is no less useful to a customer than a collection box located at a processing facility if the processing facility is not processing outgoing mail on the holiday on which the customer needs to send mail. POM § 316 expresses the POM understanding that the Postal Service will

process outgoing mail on Sundays and holidays; otherwise, this labelling requirement would not exist.

As further evidence of a policy change, the current version of the collection-box labels that appear on most collection boxes (Label #55B, August 1995) does not provide the location of a box that has a Sunday or holiday collection. The Postal Service changed the label design because the Postal Service changed the policy. Directing customers to collection boxes that have holiday collections is meaningless if the mail will not be processed on holidays.

Postal Service headquarters clearly understands a nexus between posted collection times and actual mail processing. I understand that the Postal Service issued a memo to field offices in 1999 advising them not to post holiday collections on collection boxes if the mail will not be processed on holidays. Again, postal officials understand the close relation between collections and mail processing.

The Postal Service even uses collection and processing terms interchangeably. In Attachment A to the Postal Service's answer, the *Comprehensive Statement on Postal Operations* for 1988 refers to elimination of "Sunday mailbox collection service." *Comprehensive Statement on Postal Operations*, 1988, Chapter I, page 1. Later, the report refers to the elimination of "collection and outgoing processing of mail on Sundays." *Id.* at Chapter III, page 52. In 1989, Sunday collections and Sunday processing had become, simply, "Sunday distribution." *Comprehensive Statement on Postal Operations*, 1989, at Chapter III, page 47. Each statement is referring to the same service curtailment. The terms are interchangeable. Sunday and holiday collections in the POM also imply processing.

Despite the considerable evidence that service standards for collections also require the mail to be processed on the day of collection, suppose that the Postal Service's interpretation of these POM provisions is correct, and Sunday and holiday collections are required only when dispatches of value exist to meet

established standards. If the established standards have changed, as the Postal Service admits, where was the request for an advisory opinion under 39 U.S.C. § 3661 before the Postal Service changed these standards? See, e.g., Answer at 4, ¶ 9. Changing an element of service as fundamental as the days on which outgoing mail is collected and processed surely triggers section 3661, as the days on which service is available affect the adequacy of service. Whether or not the POM requires collected mail to be processed on the day of collection, the Postal Service cannot escape from the grip of POM §§ 322.233 and 322.343. Either current services are not consistent with the POM, or the Postal Service changed the underlying standards without obtaining an advisory opinion from the Commission.

In addition, if the Postal Service is correct in asserting that POM provisions governing collections do not imply that mail processing also will occur, POM § 322.232 would not require that collection boxes be collected “as late as possible in the day.” Late collections would be as useless to customers as early collections if the mail were not going to be processed on the day of collection.

H. The Postal Service suggests that Exhibit 125.22, which prescribes collection services on holidays and the day before a holiday, loses credibility because it appears in a section of the POM titled “Lobby Management.”

The Postal Service notes that my complaint fails to acknowledge that POM Exhibit 125.22 appears in a section titled “Lobby Management.” Answer at 14, ¶ 3. The Postal Service draws no conclusion, however, probably because this observation is not very useful; therefore, no reason existed for my complaint to note this detail. This exhibit clearly prescribes the service levels that the Postal Service must provide before, on, and after holidays. The Postal Service’s observation suggests merely that the exhibit is misplaced; but the placement of the exhibit certainly does not weaken its applicability. In fact, the memoranda that the Postal Service provided in Attachment B concerning holiday service

levels in 1999 refer to this exhibit. Moreover, the November 17, 1999, memo prescribing service levels for the Christmas and New Year's holidays waives the "POM 125.22" requirement stating "consecutive days without collections should be avoided." The memo actually intends to refer to footnote 1 of *Exhibit 125.22*, the exhibit that the Postal Service now tries to discredit because it appears in a POM section titled "Lobby Management." Postal management clearly views Exhibit 125.22 as providing the controlling policy, even if postal counsel does not. The Postal Service's attempt to cast doubt on this exhibit by noting that it exists in a section titled "Lobby Management" is merely an attempt to mislead the Commission.

I. The Postal Service claims that my specific examples of problems on Christmas Eve in 1999 demonstrate why this complaint would involve the Commission in unreasonable attempts to micromanage postal operations. Answer at 18–19, ¶ 10.

My complaint cites examples of problems on Christmas Eve for the purpose of providing examples. As I explained in my complaint, curtailing collections is very bad practice. Customers who rely on a posted weekday collection time on a non-holiday weekday or Saturday should expect a collection at that time or later.³ Even a sign posted on every collection box — a solution that would be impractical — would not solve the problem for customers who time their mailing and travel in anticipation of a collection at the normal time. In 1999, mail deposited before the Friday collection time probably was not collected and processed until Monday, likely causing many customers to incur financial penalties when bill payments arrived late.

³ The Postal Service correctly notes that, contrary to the claim in my complaint at ¶ 22, the Postal Service does not need to provide normal collection service on the Sunday before a Monday holiday. Answer at 8, ¶ 22. However, the specific instance at issue in this complaint is the level of collection service provided on Friday, December 24, 1999, before the Saturday Christmas holiday. The Postal Service must provide normal collections on the day before a Saturday holiday.

Regardless of the wisdom of these service curtailments, they still were unauthorized. The November 17, 1999, memo in Attachment B authorizing early collections on Christmas Eve waived only the requirement for *late-evening* collections. Most collections are scheduled for 5:00 PM or earlier, hours that do not constitute “late evening.” The early collections on Christmas Eve in 1999 occurred well before 5:00 PM. See, e.g., Complaint at 5, ¶ 26. Customers who deposited mail in reliance on the posted Friday collection time were harmed. Moreover, as long as this practice exists, it will affect me and other postal customers in the future because we probably will not know whether we can trust posted collection times on collection boxes on the day before a holiday. This complaint is proper for this reason as well.

Furthermore, these service curtailments are not “temporary,” as the Postal Service argues, because they happen annually before certain holidays. Answer at 16–17, ¶ 7. Moreover, they certainly are not “local” because they occur in at least two Postal Service areas — and perhaps many more.

Contrary to the Postal Service’s suggestion, the Commission does not need to determine the appropriate time for collections on Christmas Eve in various cities across the country. The point is that the Postal Service needs to follow its own policy and provide collection services to the public according to the schedule posted on each collection box, for customers *rely* on the collection schedules posted on collection boxes.

J. The Postal Service claims that congressional action in 1988 justified eliminating Sunday collections and outgoing mail processing without seeking an advisory opinion from the Commission.

The Postal Service claims that the congressional mandate to reduce expenditures, which arose when the Postal Service was “on budget,” justified or required the Postal Service to eliminate Sunday collections and mail processing in 1988. See, *Id.*, at 14–16. The Postal Service supplies no legal authority

supporting its decision to bypass the section 3661 requirement to obtain an advisory opinion from the Commission first.

The *Comprehensive Statement on Postal Operations* for 1988 indicates that the Postal Service cut its budget by reducing window hours as well as eliminating collection and processing of outgoing mail on Sundays.

Comprehensive Statement on Postal Operations, 1988, Chapter I, page 1. Later that year, after meeting the budgetary savings target, the Postal Service restored window-service hours. *Id.* at Chapter I, page 2. The Postal Service did not restore Sunday collections and processing. Without the benefit of an advisory opinion from the Commission, users of the mail had no input on this service reduction, which turned out to be permanent, or on the choice between restoring window-service hours versus Sunday collections. Section 3661 exists to prevent major unilateral reductions in service such as the elimination of collection and processing of outgoing mail on Sundays without input from users of the mail.

K. The Postal Service suggests that this complaint should be split into “two substantially unrelated sets of allegations.”

The Postal Service attempts to divide this complaint into two separate categories of issues: (1) Sunday collections and outgoing mail processing, and (2) holiday collections and outgoing mail processing, and collection service on Christmas Eve and New Year’s Eve. Answer at 2. The Postal Service would like the Commission to dismiss the complaint concerning Sunday collections because many years have passed. *Id.* at 14–15, ¶ 4. Moreover, the Postal Service does not see a gradual elimination of holiday collection service as rising to the level of a nationwide change in the nature of postal services, apparently because section 3661 applies only to sudden changes, not gradual changes. See *Id.* at 2–3. In short, the Postal Service sees nothing wrong with having eliminated Sunday collections and reduced or eliminated holiday collections without providing users of the mail with their statutory right to provide input on these changes before the changes took effect.

I, however, see plenty of problems with the Postal Service's behavior. The two issues are not at all unrelated. Rather, the elimination of Sunday collections and the reduction or elimination of holiday collections *both* have occurred without statutorily mandated advisory opinions from the Commission. At some point, the Postal Service must abide by section 3661. As I explained above, considerable questions exist as to whether the Postal Service ever would consider itself obligated to submit to Commission jurisdiction over service issues. See section II.C., *supra*. The Postal Service is effectively reading section 3661 out of the Postal Reorganization Act by simply ignoring it in the course of business.

I request a public report from the Commission detailing the Postal Service's failure to seek advisory opinions under section 3661 before eliminating Sunday collections and before reducing or eliminating collections and processing of outgoing mail on holidays. The public report also should discuss service shortcomings, and the serious issues related thereto, on Christmas Eve and New Year's Eve. Interested bodies, such as the House Subcommittee on the Postal Service, should have a full report of the facts available for their review, consideration, and possible action. Even though the Postal Service took action on Sunday collections 12 years ago, the Commission is not barred from issuing a public report explaining the pattern of service cuts that began in 1988 and continues into 2000. Indeed, the length of time during which these service cuts have been occurring only strengthens the case for underscoring the need for renewed attention to section 3661, as the Postal Service has been disregarding section 3661 consistently for a decade.

III. CONCLUSION

The Postal Service and I have dramatically different views of this complaint. To the Postal Service, the Postal Service should be able to do whatever it wants because local officials are "well-situated to make an operational assessment of appropriately meeting the holiday needs of

customers[.]” Answer at 18, ¶ 8. The refusal of the Postal Service to respond to my mere *inquiries* concerning service on Christmas Eve in 1999 casts considerable doubt, of course, on the extent to which the Commission and customers should rely on the Postal Service to execute this duty faithfully and truly serve customer needs.

Indeed, in answering my complaint, the Postal Service is dismissive in responding to my concerns, seeing no validity in them whatsoever. Moreover, the Postal Service makes two claims wholly unsupported in the complaint. First, the Postal Service asserts that I want “no part of a pragmatic approach to holiday service schedules.” *Id.* Secondly, the Postal Service states that “Apparently, in Mr. Carlson’s view, the Postal Service should not have the ability to [adjust collections on Christmas Eve], regardless of the circumstances.” *Id.* at 19, ¶ 10.

The Postal Service misses the point entirely. I filed this complaint because the Postal Service has taken away collection services on many holidays without obtaining an advisory opinion from the Commission in a proceeding that would allow the Commission to examine the propriety of such a service curtailment and that would provide users of the mail the ability to provide input. Perhaps this service curtailment is advisable; perhaps it is not. The fact that we do not know is the problem. In fact, a procedure that permits public input is more likely to fashion a pragmatic solution than one where the Postal Service unilaterally curtails a service, then ignores or aggressively fights attempts to question the decision. Congress surely would agree, as Congress enacted section 3661 for precisely this purpose. The Postal Service has disregarded this provision of law, and now the Postal Service charges me with being unreasonable for complaining about it.

As for Christmas Eve and New Year’s Eve, apparently anything goes. As far as the Postal Service is concerned in responding to my complaint, local postal officials can make final collections at any time of the day and not tell customers about the curtailments, even if the POM requires normal collections and a

headquarters memorandum excuses only *late-evening* collections. The Postal Service disregards the harm that early collections before two consecutive days with no collections may cause customers, then characterizes my complaint concerning this practice as inflexible and unreasonable.

The Commission should conduct a full review of the Postal Service's collection practices on holidays, Christmas Eve, and New Year's Eve. The review will confirm that the facts that I alleged in my complaint are true, and postal customers will benefit from a public report from the Commission documenting the Postal Service's curtailment of collection services on holidays, Christmas Eve, New Year's Eve, and Sundays. A public report might even receive coverage in the press, thus generating a response from other members of the public who have suffered in silence. The Commission also should examine the difficulty that customers experience in determining which level of service will be provided on a particular holiday; obtaining accurate information can be nearly impossible.

In conclusion, this complaint provides an ideal opportunity for the Commission to confirm its jurisdiction over service complaints and to remind the Postal Service that it must abide by section 3661 *before* changing the nature of postal services on a nationwide or substantially nationwide basis. Postal customers will benefit from a public report analyzing the issues presented in my complaint.

Respectfully submitted,

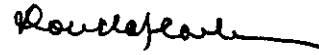


DOUGLAS F. CARLSON

Dated: December 11, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

December 11, 2000
Santa Cruz, California